

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

**JESSIE S. BARBEE
ADC #107307**

PLAINTIFF

v.

Case No. 2:13-cv-00034 KGB/HDY

**ARKANSAS DEPARTMENT
OF CORRECTION *et al.***

DEFENDANTS

ORDER

Pending before the Court are two Proposed Findings and Partial Recommended Dispositions submitted by United States Magistrate Judge H. David Young (Dkt. Nos. 7, 26) and a motion to appoint counsel (Dkt. No. 25).

The Court has reviewed the initial Proposed Findings and Partial Recommended Disposition submitted by United States Magistrate Judge H. David Young (Dkt. No. 7) and the objections filed by plaintiff Jessie S. Barbee (Dkt. No. 23). After carefully considering the objections and making a *de novo* review of the record in this case, the Court concludes that the initial Proposed Findings and Partial Recommended Disposition should be, and hereby are, approved and adopted as this Court's findings. Mr. Barbee is entitled to proceed on his claim for mail interference only against defendants Fallon Parker, Ariel Westbrook, Alex Bray, Michael Williams, Candice Cole, and Danny Burl in their official and individual capacities. Mr. Barbee has indicated in his filings that he is pursuing official-capacity and individual-capacity claims (Dkt. No. 5). Mr. Barbee will be allowed to proceed only on his mail-interference claim, and all other claims he could bring against these individual defendants are dismissed without prejudice. Sovereign immunity bars a claim for money damages against a state official in their official-capacity. *Murphy v. State of Ark.*, 127 F.3d 750, 754 (8th Cir. 1997). Sovereign

immunity also bars a claim for injunctive relief against state institutions; state officials may be sued for prospective injunctive relief under 42 U.S.C. § 1983. *Murphy v. State of Arkansas*, 127 F.3d 750, 754 (8th Cir.1997). For these reasons, Mr. Barbee's claims against the Arkansas Department of Correction are dismissed with prejudice.

The Court has reviewed the second Proposed Findings and Recommendation Disposition submitted by Magistrate Judge Young (Dkt. No. 26) and the objections filed by Mr. Barbee (Dkt. No. 27). After carefully considering the objections and making a *de novo* review of the record in this case, the Court concludes that the Proposed Findings and Partial Recommended Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects. Mr. Barbee's claims against the Doe defendants are dismissed without prejudice, and the Does are removed as party defendants.

Further, Mr. Barbee's motion to appoint counsel is denied (Dkt. No. 25).

It is therefore ordered that:

1. Mr. Barbee is entitled to proceed on his claim for mail interference only against defendants Fallon Parker, Ariel Westbrook, Alex Bray, Michael Williams, Candice Cole, and Danny Burl in their official and individual capacities.
2. Mr. Barbee's claim against the Arkansas Department of Correction is dismissed with prejudice, and the Arkansas Department of Correction is removed as a party defendant.
3. Mr. Barbee is allowed to proceed only on his mail interference claims, and all other claims are dismissed without prejudice.
4. Mr. Barbee's claims against the Doe defendants are dismissed without prejudice, and the Doe defendants are removed as party defendants.

5. Mr. Barbee's motion to appoint counsel is denied (Dkt. No. 25).

SO ORDERED this the 2nd day of June, 2014.

A handwritten signature in black ink, appearing to read "Kristine G. Baker", written over a horizontal line.

Kristine G. Baker
United States District Judge